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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 21, 1994

By Hand Delivery

Mr. William F. Caton

Acting Secretary

Federal Communications Commission

Washington, D.C. 20554

OUR FILE NO.

0992-102-60

RE: MM Docket No. 93-42, Calistoga, California

Dear Mr. Caton:

On behalf of Moonbeam, Inc., an applicant (File No. BPH-911115MG) for a New FM Station on Channel 265A in Calistoga, California, please find the original and six copies of its Proposed Findings of Fact and Conclusions of Law of Moonbeam, Inc. in the above-referenced proceeding.

Kindly communicate any questions directly to this office.

Yours very truly,



Susan H. Rosenau

Enclosures (6)

cc: Moonbeam, Inc.
Robert Zauner, Esquire
A. Wray Fitch, Esquire
Administrative Law Judge Edward Luton

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Before The
Federal Communications Commission
Washington, D.C. 20554

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JAN 21 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications Of)	Docket No. MM 93-42
)	
MOONBEAM, INC.)	File No. BPH-911115MG
)	
GARY E. WILLSON)	File No. BPH-911115MO
)	
For a Construction Permit for a)	
New FM Station on Channel)	
265A in Calistoga, California)	

To: The Honorable Edward Luton
Administrative Law Judge

**Proposed Findings of Fact
And Conclusions of Law
Of Moonbeam, Inc.**

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January 21, 1994

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SUMMARY

Moonbeam, Inc. ("Moonbeam") is an applicant for a new FM station on Channel 265A at Clistoga, California. Moonbeam had designated against it issues of whether it falsely certified as to its financial qualifications in its original application and its amendment as of right, and whether it is presently financially qualified. At a hearing on November 15, 1993, Moonbeam proved that:

- From the time it filed its original application, its sole shareholder, sole director, and president, Mary F. Constant, was the source of its proposed funding;
- prior to certifying as to Moonbeam's financial qualifications, Ms Constant reviewed her current assets and current liabilities, prepared a balance sheet, and with the assistance of her attorney and her engineer, prepared a business plan for Moonbeam's proposed station;
- Ms. Constant's conduct does not indicate any intent to deceive the Commission in connection with Moonbeam's financial certification;
- from the time the financial issues were designated until the time of hearing, Ms. Constant had sufficient current assets in excess of current liabilities to construct and operate Moonbeam's proposed station for three months;
- Ms. Constant has now, in fact, deposited the promised funds in Moonbeam's bank account, where she intends them to remain until this proceeding is decided.

Based on these facts, it appears that Moonbeam's original and amended financial certifications were both genuine, and that Moonbeam is currently financially qualified.

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265A in Calistoga, California)	

To: The Honorable Edward Luton
 Administrative Law Judge

**Proposed Findings of Fact
 And Conclusions of Law**

Pursuant to Sections 1.263 and 1.264 of the Commission's Rules, Moonbeam, Inc. ("Moonbeam"), by its attorneys, respectfully submits its Proposed Findings of Fact and Conclusions of Law with respect to the qualifying issues heard November 15, 1993:

Preliminary Statement

1. Moonbeam and Willson are competing applicants for a new FM station on Channel 265A at Calistoga, California. The Hearing Designation Order ("HDO") in the above-captioned proceeding was released on March 8, 1993.

2. By Memorandum Opinion and Order (FCC 93M-449), the Presiding Officer designated the following issues:

(1) To determine whether Moonbeam, Inc. is financially qualified to construct and operate the proposed new FM station in Calistoga and, if not, the effect thereof on Moonbeam's basic qualifications to be a Commission permittee/licensee.

(2) To determine whether Moonbeam, Inc.'s President, Mary Constant falsely certified that Moonbeam, Inc. was financially qualified in the initial application filed November 15, 1991, and/or again in an amendment filed March 2, 1992 and, if so, the effect thereof on Moonbeam's basic qualifications to be a Commission permittee/licensee.

3. The Presiding Officer heard evidence on these issues on November 15, 1993, on which date the record in this proceeding was closed.

FINDINGS OF FACT

I. FALSE CERTIFICATION

A. Moonbeam's November 12, 1991 Certification

4. Moonbeam, Inc. is an Idaho corporation in the broadcast business (Transcript of Proceedings, Docket MM93-42, November 15, 1993 ("Tr."), at 275, 277-278). Mary F. Constant holds the offices of President, Vice-President and Treasurer of Moonbeam. Tr. at 275. Ms. Constant is Moonbeam's sole shareholder and sole director. Tr. at 277-278. Moonbeam's Secretary is Pat Van Papaeghum. Tr. at 278.

5. Mary F. Constant purchased 10 shares of Moonbeam stock on May 28th, 1991, for which she paid \$1,000.00. Tr. at 278-279; Moonbeam Exhibit A.

6. Moonbeam has twice applied for a broadcast license. In May, 1991, Moonbeam applied for a construction permit for a Class C FM station in Eagle, Idaho. Tr. 280, 281. A settlement was reached in July, 1991 and was promptly submitted to the FCC for approval. Tr. at 285. Ms. Constant was shortly thereafter advised by counsel that the FCC's staff had indicated that the settlement would be approved.

Tr. at 286. The amendment was finally approved and consummated in January, 1992.

7. After being so advised, Moonbeam had no further intention of prosecuting its Eagle, Idaho, application and submitted its November 15, 1991, application for a construction permit in Calistoga, California. Tr. at 285-286.

8. Using Moonbeam's Eagle, Idaho application as a model and a source of information, Ms. Constant drafted Moonbeam's Calistoga application and forwarded to counsel to be typed. Tr. at 287. On both applications, Ms. Constant identified as Alex, Brown & Sons as the source of funds for construction, and listed J. Langwith Manion as the contact individual, on the theory that Mr. Manion could confirm the existence of funds on account. Tr. 284-285, 288.

9. In doing so, Ms. Constant did not intend to indicate that Moonbeam would build the proposed station with borrowed funds; at all times since she signed Moonbeam's original application, Ms. Constant's intended to finance the construction and initial three months' operations of Moonbeam's proposed station with her own funds, held on her account at Alex, Brown & Sons. Tr. at 284, 288, 307, 315, 316, 317, 319. Ms. Constant testified that she would provide the funds as a capital contribution to the corporation. Tr. at 308.

10. Slightly prior to completing Moonbeam's financial certification and signing Moonbeam's application, Ms. Constant reviewed her finances. Ms. Constant reviewed her most recent statements from Alex, Brown & Sons, which were dated August 30, 1991, and reviewed her current liabilities. Tr. at 296; Moonbeam Exhibits B, C.¹ She

¹Exhibits B and C are duplicate statements sent by Alex, Brown & Sons at Ms. Constant's request for production in this proceeding. The originals were lost when, in the course of moving Ms. Constant's

excluded from her current liabilities the 1991 payments on the residential mortgage, because the residual payments for renting the property out as a movie set covered all or most of the mortgage, and amply covered Ms. Constant's half of the payments. Tr. at 295-301. In addition to reviewing her account statements, Ms. Constant had in her mind a fairly complete picture of her finances. Tr. at 305.

11. Ms. Constant did not consider her own income from modeling or other payables; nonetheless, her net assets after payment of current liabilities exceeded \$153,000.00. Moonbeam Ex. D. Ms. Constant summarized these facts in a balance sheet, which she reviewed and had before her when she certified as to Moonbeam's financial qualifications. Tr. at 295, 299, 308. See Moonbeam Exhibit D.

12. With the assistance of Moonbeam's communications attorney and engineer, Ms. Constant prepared a business plan or budget for Moonbeam. See Moonbeam Exhibit F. Moonbeam's engineer is Elliott Klein. Mr. Klein gave Ms. Constant cost estimates over the telephone and, at her request, put the estimates in writing and sent them to her. Tr. at 290-291. Ms. Constant increased some of Mr. Klein's estimates when preparing Moonbeam's budget to allow a margin of error. Tr. at 291.

13. Ms. Constant has known Mr. Klein personally and professionally for 12 years. During that time, she has known him to construct a number of radio stations. Tr. at 292. Ms. Constant also discussed Mr. Klein's cost estimates with her communications attorney, Lee W. Shubert. Mr. Shubert agreed that the estimates were reasonable and provided an estimate of Moonbeam's legal fees. Tr. at 307, 385-386.

office several months ago, movers accidentally discarded several boxes containing personal documents. Tr. at 298, 337.

14. Ms. Constant reviewed all of the above material prior to signing Moonbeam's application. She relied upon these documents and her independent knowledge of her finances in reaching her conclusion that she could provide Moonbeam with available, unencumbered liquid assets sufficient to construct Moonbeam's proposed station and operate it for three months. Tr. at 298-300, 303-305, 307. Based on her conclusion, on November 12, 1991, Ms. Constant certified that Moonbeam was financially qualified. *Id.*

15. Ms. Constant's December, 1991 Alex, Brown & Sons reflects a balance of \$190,000, more than Ms. Constant estimated was needed to construct and operate Moonbeam's proposed station. Moonbeam Exhibit H. The accounts in which Ms. Constant's funds were held were ordinary accounts not subject to any withdrawal penalty or encumbrance. Tr. at 309. Moonbeam Exhibits B and C, H.

B. Moonbeam's March 2, 1992 Amendment

16. Ms. Constant's financial situation did not substantially change during the period from August 30, 1991, through March, 1992. Tr. at 313, 315, 320. On February 27, 1992, Ms. Constant signed an amendment as of right to Moonbeam's application, which included a revised financial certification. See Moonbeam Exhibit I. The financial certification was revised, on advice of Moonbeam's attorney, to more accurately reflect that Mary Constant, not Alex, Brown & Sons, was the source of the funds to construct and operate Moonbeam's proposed station. See Moonbeam Exhibits G, I. The amendment was not intended to reflect, and did not in fact reflect, any change in Moonbeam's financial plan or circumstances; it was intended as a purely technical correction. Tr. at 315-319. The amendment was filed on March 2, 1992, before the deadline for filing amendments as of right.

18. Because the amendment was purely one of form, Ms. Constant did not prepare a new balance sheet. Tr. at 320. Further, at the time Ms. Constant signed and filed the amendment, she knew there had been no substantive negative change in Moonbeam's financial qualifications. Tr. at 320.

19. At the time Mary Constant signed Moonbeam's amended certification, she was not aware of any liens or encumbrances of any kind against her liquid assets. Tr. at 314, 319.

II. MOONBEAM'S CURRENT FINANCIAL QUALIFICATIONS

A. Available Net Liquid Assets

20. As of June 30, 1993, shortly before the issues herein were designated, Ms. Constant had more than \$400,000.00 in net liquid assets available to construct and operate Moonbeam's proposed station. Moonbeam Exhibit J. Some of that money consisted of proceeds from the sale of the Nicasio, California, residence, which Ms. Constant owned jointly with her husband, and was transferred into another account during the next month, leaving Ms. Constant with more than \$280,000.00 to construct and operate Moonbeam's proposed station. Tr. at 356; Moonbeam Exhibits K, L.

B. California Tax Lien

21. At some point after certifying Moonbeam's financial qualifications, Ms. Constant learned of a \$13,291.40 state tax lien imposed against property she then owned in Nicasio, California, by the California Franchise Tax Board. Tr. at 313-314. The lien was the result of a tax dispute concerning the classification of a corporation owned by Mr. Constant. Tr. at 314. The lien was fully paid and released in April, 1993. Tr. at 314. Since the payment of the lien, Mr. and Ms. Constant

have received a refund of a significant portion of the payment, based on their partial success in disputing the tax liability. Tr. at 314.

22. Ms. Constant testified that, even if the Nicasio tax lien is treated a current liability, her funds were at all times since the signing of Moonbeam's application sufficient to construct and operate Moonbeam's proposed station. Tr. at 314-315.

C. Mechanic's Lien

23. Willson also produced evidence that, in June, 1992, a \$2,341.00 mechanic's lien was recorded against Mary Constant by a pool contractor. Tr. at 366-367 and Willson Exhibit C. Ms. Constant acknowledged that she had been aware of the lien but had not viewed it as an actual encumbrance on her property; she had viewed it as a device used by subcontractors to ensure payment by a general contractor. Tr. at 366-367. In any event, Ms. Constant testified that the lien has since been paid and that the lien never affected her financial ability to fund the construction and operation of Moonbeam's proposed station. Tr. at 368.

D. Legal Fees

24. Ms. Constant testified that, throughout this proceeding, she has been paying Moonbeam's legal fees on an ongoing basis, and that she intends to continue to do so. Tr. at 327-329. At the time of hearing, Moonbeam had an outstanding balance of \$30,000.00. Tr. at 328, 370-371. Ms. Constant testified that she has paid and will continue to pay Moonbeam's prosecution expenses out of current income and funds other than those earmarked for the proposed station, which did include a budget of \$30,000.00 in legal fees. Tr. at 328-329, 379.

E. Crop Loan

25. Ms. Constant testified, and Willson cross-examined Ms. Constant regarding a crop loan in the amount of \$546,300.00, which was signed by Mr. and Ms. Constant in June, 1993. Tr. at 325-327, 342-347. The loan is secured by the vineyard crop and the vineyard itself. Tr. at 325, 345. Ms. Constant testified that, under the terms of the loan, they had the choice of paying the loan annually out of the proceeds of their vineyard crop, or of making monthly payments of \$4,276.63. Tr. at 325, 349. The Constants chose to make monthly payments. Tr. at 344-347.

26. The 1993 crop was sold under contract to Pine Ridge Winery. Tr. at 381. The contract was in place when the Constants purchased the vineyard in April, 1993. Tr. at 326. The crop exceeded 70 tons and was sold for more than \$2,000.00 per ton. Tr. at 384.

27. Ms. Constant did not include the 1993 crop loan payments in her calculation of liabilities on her balance sheet, because she viewed them as self-liquidating, secured by and to be paid out of the vineyard crop. Tr. at 326-327, 365. Even if the 1993 crop loan payments are included among Ms. Constant's 1993 current liabilities, sufficient liquid assets remain to meet Moonbeam's estimated initial expenses. See Moonbeam Exhibits K, L.

28. On November 11, 1993, Ms. Constant transferred \$90,000.00 into Moonbeam's bank account, which when added to funds already on account, provided Moonbeam with sufficient funds to construct and operate Moonbeam's proposed station. Tr. at 320-321, 328-329. Ms. Constant plans to leave those funds in Moonbeam's account until such time as she is awarded the construction permit in this proceeding, or her application is dismissed. Tr. at 328-329.

CONCLUSIONS OF LAW

29. By order released September 29, 1993 (FCC 93M-623), Moonbeam bears the burden of proceeding and the burden of proof on these issues. *See also Gaco Communications Corporation*, 94 FCC 2d 761, 776, 54 R.R.2d 77, 89-90 (Rev. Bd. 1983).

I. FALSE CERTIFICATION

30. Before Moonbeam can be held to have deliberately misrepresented its qualifications to the Commission, Moonbeam must be found to have "consciously intended" to deceive the Commission with respect to the qualifications at issue. For example, in *Georgia Public Telecommunications Commission*, 7 FCC Rcd 2942, 70 R.R.2d 1308 (Rev. Bd. 1992), one of the many cases involving the corrupt organization known as Sonrise Management Services, the applicant had relied on the assurances of representatives of Sonrise that funding would be supplied. *Id.* at 2946-48. The assurances turned out to be worthless, and after hearing, the Presiding Officer found that the applicant had falsely certified his financial qualifications. *Id.*

31. The Review Board reversed, because the record reflected that the applicant had not had reason to doubt the assurances, and had taken a number of steps to verify the assurances, including unscheduled visits to Sonrise representatives and independent efforts to estimate costs. *Id.* The Board held there must be findings that "specific statements of material fact were deliberately misrepresented or that the applicant concealed specific information." *Id.* at 2948; *Armando Garcia*, 3 FCC Rcd 1065, 1067, 64 R.R.2d 1005, 1008 (Rev. Bd. 1988). Proof that the applicant was not, in fact, financially qualified is not alone sufficient to prove that the applicant falsely certified. *Id.* All the

applicant must prove is that it "engaged in serious and reasonable efforts to ascertain predictable construction and initial three months operating costs and that it established the availability of funds to meet those estimated expenses." *Georgia Public Telecommunications*, 7 FCC Rcd at 2948.

32. Moonbeam has proved by substantial and probative evidence that, on both November 12, 1991, and February 27, 1992, that it had no intent to deceive the Commission with its financial certification, that it was, in fact, financially qualified to construct and operate its proposed station, and that it made the required efforts to ascertain costs and available funds. Accordingly, the false certification issue must be dismissed.

A. The "Amendment" Of Moonbeam's Financial Certification

33. To resolve finally the elusive non-issue raised in Willson's original request to add financial issues against Moonbeam, there can be no question that Moonbeam has, from the filing of its application, always intended to fund its proposed station out of Mary Constant's assets. Briefly stated, Willson pointed out that Moonbeam's November 15, 1991, application identified the source of its funding as Alex, Brown & Sons, and Moonbeam's March 2, 1992, amendment identified the source of funding as Mary F. Constant, but denied the existence of any loan commitment letter or other documentation to prove that on November 15, 1991, Alex, Brown was prepared to loan or advance funds.

34. Based on the evidence, and as Moonbeam has argued all along, this question was a red herring. Moonbeam has one shareholder and director, who also holds most of Moonbeam's offices -- Mary F.

Constant. In effect, Mary F. Constant is Moonbeam, Inc., and as such always intended to finance Moonbeam's station. There has been absolutely no evidence offered or elicited on the record to support Willson's allegations that the March 2, 1992, financial amendment reflected any substantive change in Moonbeam's financial plan; the wholly unrefuted evidence shows that Moonbeam's financial amendment was purely technical in nature.

B. Review Of Available Assets

35. Although Ms. Constant did not have an account statement for the exact date the application was signed and/or filed, account statements from shortly before and shortly after reflect funds well in excess of the amount Ms. Constant estimated Moonbeam will require to construct and operate its proposed station. Moonbeam Exhibits B, C, H (Alex, Brown & Sons account statements for August, 1991 and December, 1991).

36. Ms. Constant testified that the August statements, which she received in September, were the most recent statements available when she completed her application, and that she knew the funds were available during the period between August and December. Tr. at 308-309. No evidence to the contrary has been offered. Notice can be taken that personal savings in the amount required to build Moonbeam's proposed station rarely, if ever, both disappears and reappears in a single quarter.

37. It is also unrefuted that, on both certification dates, Ms. Constant knew she had sufficient liquid assets in reserve to construct and operate Moonbeam's proposed station for three months without income. She was familiar with her own assets and liabilities, but also took formal steps to summarize her assets and liabilities in a balance

sheet. The fact that Ms. Constant's balance sheet does not contain a great deal of detail does not establish an intent to deceive, which is the *sine qua non* to a finding of false financial certification. *Georgia Public Telecommunications, supra*.

38. There also exists no proof that, at the time of certification, Ms. Constant was aware of owing any state or federal taxes. The California tax lien of about \$13,000.00 (including penalties) was not imposed until the end of 1992, and resulted from a dispute regarding the classification of a corporation held by Ms. Constant's husband. Mr. and Ms. Constant's legal position regarding the dispute had some merit, because some portion of the lien amount was recently refunded to the Constants. Thus, unlike the applicant in *Las Americas Communications, Inc.*, 101 FCC 2d 728 (Rev. Bd. 1985), it does not appear that when Ms. Constant certified, she was aware of any failure to satisfy her nominal, though lawful, tax liabilities. Further, the modest amount of the lien did not appear to affect Ms. Constant's financial qualifications. *See Reding Broadcasting Co.*, 69 FCC 2d 2201, 2203-2205, 43 R.R.2d 1653, 1656-1658 (Rev. Bd. 1978).

39. In summary, it appears that Ms. Constant undertook a sufficiently "serious and reasonable" review of her finances to establish that she was, in fact, financially qualified, which satisfies the standard set in *Georgia Public Telecommunications*.

C. Moonbeam's Cost Estimate

40. To certify financial qualifications in good faith, an applicant must make "serious and reasonable efforts to ascertain predictable construction and operation costs," as required by the Commission. *Georgia Public Telecommunications*, 7 FCC Rcd at 2948, 70 R.R.2d at 1315; *A.P. Walter, Jr.*, 6 FCC Rcd 875, 68 R.R.2d 1460 (Rev. Bd. 1991);

Armando Garcia, 3 FCC Rcd 1065, 64 R.R.2d 1009. There is no evidence on the record that Moonbeam's cost estimate was not made in good faith. Ms. Constant obtained cost estimates from Moonbeam's consulting engineer, Elliott Klein, who she knew to be experienced in constructing radio stations. She confirmed that these estimates were reasonable with her communications counsel. In incorporating these estimates into Moonbeam's financial plan, Ms. Constant even increased some of these estimates to allow Moonbeam a margin for error. Even had Willson presented evidence that these estimates were "so far below average or beyond a range of reasonableness" -- which Willson did not -- it is clear that Ms. Constant made a serious effort to ascertain Moonbeam's expenses. *Id.*

41. These actions are sufficient to establish good faith financial certification. In *Armando Garcia*, *supra*, the applicant's inquiry was found sufficient where he had "arrived at his detailed estimates based upon his discussions with lawyers, engineers and professional broadcasters." 3 FCC Rcd 1066, 64 R.R.2d at 1006. Ms. Constant testified that she was very familiar with Mr. Klein's substantial experience in constructing new radio stations. It seems clear that her efforts are sufficient.

42. In summary, Moonbeam has carried its burden, and Willson has presented no substantial evidence to indicate that Ms. Constant's testimony or documentary evidence is false or incredible. As explained in *Hassayampa Broadcasting*, 92 FCC 2d 472, 473, 52 R.R.2d 1059, 1060 (Rev. Bd. 1982), "mere allegations," surmise and speculation are not sufficient to rebut a specific fact showing of available funds, or in this instance, the good-faith belief that funds were available. Ms. Constant's entire course of conduct indicates that her certification was

genuine. See *RKO General, Inc. (WHBQ-TV)*, 5 FCC Rcd 638, 639-640, 67 R.R.2d 504, 506-507 (1990).² Accordingly, the false certification issue must be resolved in favor of Moonbeam.

II. PRESENT FINANCIAL QUALIFICATIONS

43. Moonbeam's evidence on this issue is also essentially unchallenged, and is more than sufficient to carry Moonbeam's burden of proof that it is financially qualified. *Hassayampa, supra*. At hearing, Moonbeam established by un rebutted proof the continued availability of more than \$200,000.00 in Mary Constant's funds to construct and operate a proposed station for which costs are estimated at \$95,000.00 -- even including the 1993 payments on the "crop loan" signed by the Constants in June, 1993, which in any event has been proved to be self-liquidating.

44. The effect of the California tax lien (and the \$2,341.00 Mechanic's Lien) is of even less significance. There is nothing in the record to support the conclusion that these liabilities now render -- or ever rendered -- Moonbeam financially unqualified. Further, Ms. Constant's sworn testimony was that these liens had no effect.

45. Moonbeam's legal expenses do not alter this conclusion. Mary Constant testified that Moonbeam has been paying its legal expenses on an ongoing basis. Tr. at 327-328. Moonbeam's legal expenses have thus far exceeded \$60,000.00, and at the time of hearing, Moonbeam had an unpaid balance of about \$31,000.00 Tr. at 370-371.

²In *RKO*, the Commission considered a *Grayson* determination regarding an applicant found by the ALJ to have falsely certified financial qualifications. The Commission acknowledged that its standards in this area are in some respects highly technical, citing *Northhampton Media Associates*, 4 FCC Rcd 5517, 5518-19 (1989), and indicated that it was appropriate to look at the applicant's overall course of conduct. Thus, while a question existed whether the applicant had in all respects complied with the Commission's standards, its conduct -- in this case, by relying on a third party's oral assurances of the availability of funds -- did not indicate any intent to deceive the Commission.

Ms. Constant budgeted \$30,000.00 for legal expenses in her business plan. Moonbeam Exhibit F; Tr. at 379.

46. The applicable precedent states that if legal expenses are paid on an ongoing basis, they are not relevant to an applicant's financial qualifications. *Grady Lynn and Carol Lynn d/b/a Lynn Broadcasting*, 8 FCC Rcd 6719 (1993); *Linda V. Kulisky*, 8 FCC Rcd 6235, 6239 (Rev. Bd. 1993); *Port Huron Family Radio*, 5 FCC Rcd 4562, 4563, 68 R.R.2d 28, 29 (1990).

47. None of the foregoing authorities state that the applicant's account must be kept absolutely current to apply this rule. It appears from the record that, at a minimum, Ms. Constant has been paying Moonbeam's legal expenses in excess of her original estimate of \$30,000.00. See Moonbeam Exhibit H. The net effect on Moonbeam's financial qualification is the same as if Moonbeam had kept its account current, *i.e.*, if awarded the Calistoga permit, Moonbeam's budget for legal expenses will be sufficient. Accordingly, Moonbeam's legal expenses will not be considered further.

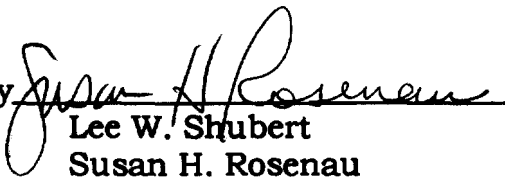
48. Ms. Constant has taken the further step of actually transferring the committed funds to Moonbeam, where she has testified they will remain until Moonbeam is granted a constructed permit or its application is dismissed. In sum, it appears by unrefuted, probative evidence that Moonbeam was, at the time this issue was designated and remains, financially qualified to construct and operate its proposed station.

CONCLUSION

49. Moonbeam has successfully carried its burden of proof, and established that its financial certifications were made in good faith, and that it is financially qualified to construct and initially operate the station it proposes at Calistoga, California. Accordingly, Moonbeam has addressed and satisfied the financial issues specified against it, and Moonbeam must be found qualified to be a Commission licensee.

Respectfully submitted,

MOONBEAM, INC.

By 
Lee W. Shubert
Susan H. Rosenau

Its Attorneys

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January 21, 1994

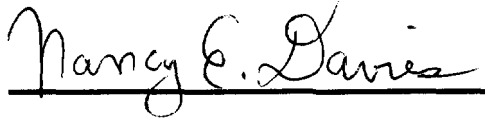
CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies the the foregoing Proposed Findings of Fact and Conclusions of Law was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

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January 21, 1994

**By telecopier and mail